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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 KEITH E. BERRY,

11 Plaintiff,

12 v.

13 RUSSELL O'FERRELL, et al.,

14 Defendants.

No. C09-5042 RBL/KLS

REPORT AND RECOMMENDATION
Noted for September 18, 2009

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16 This case was referred to United States Magistrate Judge Karen L. Strombom pursuant to
17 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. Plaintiff filed a civil rights complaint under 42
18 U.S.C. § 1983, but failed to pay a filing fee or file an application to proceed *in forma pauperis*.
19 Dkt. # 1. To file a complaint and initiate legal proceedings, a plaintiff must pay a filing fee of
20 \$350.00 or file a proper application to proceed *in forma pauperis*. Accordingly, Plaintiff was
21 ordered to file an application to proceed *in forma pauperis* or pay the filing fee. Dkt. 3. Plaintiff
22 has not responded to the Court's Order.
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24 **I. DISCUSSION**

25 The court may permit indigent litigants to proceed *in forma pauperis* upon completion of
26 a proper affidavit of indigency. See 28 U.S.C. § 1915(a). However, the court has broad

1 discretion in denying an application to proceed *in forma pauperis*. *Weller v. Dickson*, 314 F.2d
2 598 (9th Cir. 1963), *cert. denied*, 375 U.S. 845 (1963).

3 Several district courts have ruled that denial of *in forma pauperis* status is not
4 unreasonable when a prisoner is able to pay the initial expenses required to commence a lawsuit.
5 *See Temple v. Ellerthorpe*, 586 F.Supp. 848 (D.R.I. 1984); *Braden v. Estelle*, 428 F.Supp. 595
6 (S.D.Tex. 1977); *U.S. ex rel. Irons v. Com. of Pa.*, 407 F.Supp. 746 (M.D.Pa. 1976); *Shimabuku*
7 *v. Britton*, 357 F.Supp. 825 (D.Kan. 1973), *aff'd*, 503 F.2d 38 (10th Cir. 1974); *Ward v. Werner*,
8 61 F.R.D. 639 (M.D.Pa. 1974).

10 On January 22, 2009, Plaintiff filed his proposed petition for civil rights violation. Dkt.
11 1. On January 28, 2009, the Clerk advised Plaintiff that he must submit either the full \$350.00
12 filing fee or an application for *in forma pauperis* status by February 6, 2009 or his action may be
13 subject to dismissal. Dkt. 2. On August 10, 2009, the Court ordered the Plaintiff to pay the
14 \$350.00 filing fee or submit a proper application to proceed *in forma pauperis* no later than
15 August 28, 2009. Dkt. 3. The Court advised Plaintiff that his failure to either pay the filing fee
16 or submit a proper application to proceed *in forma pauperis* by the August 28, 2009 deadline
17 would be deemed a failure to properly prosecute this matter and that the undersigned would
18 recommend dismissal of this matter. *Id.* Plaintiff did not respond to the Court's Order, pay the
19 filing fee or submit an application to proceed *in forma pauperis*.


21 II. CONCLUSION

22 The undersigned recommends the Court dismiss Plaintiff's Complaint unless he pays the
23 required \$350.00 fee **within thirty (30) days** of the Court's order.

25 Pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b), the parties
26 shall have ten (10) days from service of this Report and Recommendation to file written

1 objections thereto. *See also* Fed.R.Civ.P. 6. Failure to file objections will result in a waiver of
2 those objections for purposes of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985). Accommodating
3 the time limit imposed by Fed. R. Civ. P. 72(b), the Clerk is directed to set this matter for
4 consideration on **September 18 2009**, as noted in the caption.

5 **DATED** this 1st day of September, 2009.

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8 Karen L. Strombom
9 United States Magistrate Judge
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